



Commonwealth  
of Massachusetts

## *OCPF Online*

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*Office of Campaign and Political Finance*

*One Ashburton Place, Room 411*

*Boston, MA 02108*

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### Advisory Opinion

January 31, 2001

AO-01-01

Harris Gruman, Director  
Neighbor to Neighbor  
8 Beacon Street, 4<sup>th</sup> Floor  
Boston, MA 02108

Re: Receipt of state funds by organization's education fund

Dear Mr. Gruman:

This letter is in response to your January 9, 2001 letter asking for an advisory opinion regarding eligible funding sources for your organization given the organization's participation in state elections.

You have stated that Neighbor to Neighbor is in fact two separate Massachusetts non-profit corporations, the Neighbor to Neighbor Massachusetts Action Fund and the Neighbor to Neighbor Massachusetts Education Fund, each with its own separate bank account and tax identification number. Both are registered as active non-profit corporations with the Secretary of the Commonwealth's Division of Corporations.

The Action Fund is registered with the Internal Revenue Service as a 501(c)(4) organization. The Action Fund makes expenditures to support candidates and ballot question campaigns.

A separate Education Fund is registered with the Internal Revenue Service as a 501(c)(3) organization that undertakes non-partisan voter registration, education and turnout work. The Education Fund, unlike the Action Fund, may receive tax-deductible donations. You have stated that the Secretary of the Commonwealth has offered to make a contribution to the Education Fund of several thousand dollars to support the Fund's voter registration, education and turnout work.

Although the two corporations' bank accounts are strictly segregated, transfer payments are regularly made from the Action Fund to the Education Fund to reimburse the Education Fund for its share of biweekly payroll.

### **Question**

May the Action Fund continue to make in-kind campaign contributions to candidates under the 10/15 rule, or partisan expenditures, if the Education Fund receives funds from the Commonwealth of Massachusetts?

### **Answer**

Yes, because the Action Fund and Education Fund maintain segregated accounts and the Education Fund is a separate legal entity that complies with 26 U.S.C. 501(c)(3) and does not support or oppose candidates, political parties or ballot questions.

### **Discussion**

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a State election. Accordingly, this office has concluded that governmental entities may not expend public resources or contribute anything of value to support or oppose a candidate, political committee or ballot question. See IB-91-01.

In an advisory opinion issued in 1989 to the Massachusetts Municipal Association, an organization that receives its financial support in part from cities and towns, the office stated that a single accounting system designed to separate municipal funds from other funds would not be sufficient to overcome the prohibition against the use of appropriated money for political purposes. See AO-89-21. The office suggested that physically separate accounts would be required to ensure that there would be no commingling of permitted and prohibited moneys. See also AO-95-41 (Martha's Vineyard Community Services could not make expenditures in a political campaign because public funds were intermingled with other funds of the organization).

In the circumstances described in your letter, the Education Fund and the Action Fund would maintain segregated accounts.<sup>1</sup> More importantly, the Education Fund and the Action Fund are separate legal entities. The Education Fund must meet stringent legal requirements to ensure that it maintains its status as a tax-exempt organization. See 26 U.S.C. 501(c)(3), which provides, in part, that certain corporations are exempt from taxation if "no substantial part of the activities" of the corporation involve "carrying on propaganda" and the corporation "does not participate in . . . any political campaign on behalf of (or in opposition to) any candidate for public office." There may be instances where segregation of accounts does not, by itself, ensure compliance with the campaign finance law.<sup>2</sup> Where, however, an organization creates two separate legal entities and one of the

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<sup>1</sup> The payments by the Action Fund to the Education Fund to reimburse the Education Fund for the Action Fund's share of the biweekly payroll would not be inconsistent with the campaign finance law because the Action Fund does not receive public funds. In contrast, an issue under Anderson and the campaign finance law would exist if the Action Fund *did not* promptly reimburse the Education Fund for payments initially made by the Education Fund on behalf of the Action Fund.

<sup>2</sup> For example, if the receipt of public funds into a segregated account enables other funds of an organization to be used to support PACs, candidates or political parties. See AO-98-18 (stating that corporate funds could not be received into a segregated account if such receipt would enable other funds of an organization to be used for political campaign purposes).

entities ensures that it complies with 26 U.S.C. 501(c)(3) and, in addition to not supporting or opposing candidates or political parties, also does not support or oppose ballot questions, such status

further reflects compliance by the 501(c)(3) organization with the campaign finance law, even if the 501(c)(3) organization receives public funds.

The Action Fund would be subject to the limitations and reporting requirements described in IB-88-01, which states that organizations which make expenditures to support or oppose candidates, PACs or party committees, but do not solicit or receive funds for such purposes, are not treated as political committees unless the expenditures are “more than incidental.” Expenditures are more than incidental if they exceed, in the aggregate, in a calendar year, either \$15,000 or 10% of such organization’s gross revenues for the previous calendar year, whichever is less.

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan  
Director